

ALTERNATIVE SCHOOLS

COMMONLY ASKED QUESTIONS AND ANSWERS

SOUTH CAROLINA DEPARTMENT OF EDUCATION OFFICE OF EXCEPTIONAL CHILDREN

Can an alternative school or a local educational agency (LEA) take the position that students with disabilities cannot attend an alternative school?

No. Students with disabilities may not be denied access to alternative schools. Decisions regarding placement in an alternative school for these students must be made on an individualized basis if the student is otherwise qualified to attend. Any LEA policies that allow alternative schools to serve nondisabled students removed from their regular school settings for disciplinary reasons or any other reason, but do not admit students with disabilities removed for the same type of disciplinary infractions are discriminatory. Such policies are discriminatory against students with disabilities in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504). If, however, the LEA can show that it has another program that is appropriate and allows students with disabilities to have all of the necessary services and instruction and effectively progress in the general curriculum in the same manner as if they were in the regular education setting, they may be able to avoid noncompliance with Section 504. Any benefits that a similarly-situated nondisabled student receives at the alternative school must be available to the student with a disability in this other setting. If the alternative school allows participation in physical education, home economics, typing, or auto mechanics and these courses are appropriate for a student with a disability, the LEA must make the same benefits available to the student with a disability, either at the alternative school or some other setting. The alternative school must also provide any instructional or related services in the student's individualized education program (IEP).

Must alternative schools and programs allow students with disabilities to continue to participate in the general curriculum?

Yes. Alternative schools and programs must allow a student with a disability who was previously participating in the general curriculum to continue to do so as set forth in his or her IEP.

Who can determine whether a student with a disability may be placed in an alternative school or program?

This determination must be made by the IEP team. The student's IEP team must determine the appropriate amount of special education and related services that the student needs to receive a free appropriate public education (FAPE) and determine how the services will be delivered. This cannot be a unilateral decision made by LEA personnel at either the student's regular school or the alternative school. It must be an IEP team decision. All of the necessary information regarding the student must be transferred to the alternative school to provide the continued services. The

Individuals with Disabilities Education Act (IDEA) explicitly requires the continuation of a FAPE for students with disabilities who are removed from their regular settings.

What least restrictive environment (LRE) considerations must be made by the IEP team?

When the IEP team recommends a removal to the alternative school, it must determine whether the LRE requirements under federal and state law were appropriately considered. Will maintaining the student's regular placement be disruptive and significantly impair the ability to meet the needs of the student and others in the classroom? Were supplementary supports and services implemented prior to proposing a change in placement? Is there a need to conduct a functional behavioral assessment (FBA) or develop or review and revise the behavioral intervention plan (BIP)

Must alternative schools and programs provide all of the necessary accommodations and modifications related services, and supplementary aids and services needed for a student with a disability to benefit from the educational program?

Yes. The alternative school and program must adhere to all of the requirements as set forth in students' IEPs and necessary for the students' continued receipt of a FAPE and access to the program. Failure to provide all of the required services listed on the IEP is a major violation of the IDEA.

Services must be available at the alternative school that enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP. All IEPs and BIPs must be carried out in the alternative school. The student is still entitled to the provision of any related services included in his or her IEP. A FAPE includes the continued provision of special education and related services in accordance with all federal and state standards.

Personnel at the alternative school who will provide services to the student must be made aware of their responsibilities in providing the student a FAPE. The state curriculum standards must be incorporated into instruction and the students must continue to participate in state- and district-wide assessment. Students who are age-eligible must receive appropriate transition services.

If the IEP of a student who is attending an alternative school or program includes transportation as a related service, must the transportation continue to be included?

If transportation is provided in the student's IEP as a related service, then the student continues to be entitled to transportation services at the alternative school. In some cases, although it is not in the IEP, a denial of transportation would prevent the student from attending the alternative school and from benefiting from

his or her educational program. In these instances, the Office for Civil Rights (OCR) might determine that a failure to provide transportation would exclude the student from school and violate Section 504, although it is not in the IEP.

May an alternative school or program serve as an interim alternative educational setting?

Yes. An alternative school or program may serve as an interim alternative educational setting if the alternative school or program allows the child to continue to participate in the general curriculum and continue to receive the services and modifications, including those described in the student's current IEP that will enable the student to meet the goals set out in the IEP. Services and modifications designed to address the behavior that lead to the student's removal from his or her regular setting must be included in the student's IEP so that the behavior does not recur when the student returns to school.

Is it necessary to revise the IEP for a student who is placed in an alternative school or program?

In instances where the IEP for a student with a disability can be implemented as written in the alternative school or program, there is no need for the IEP team to revise the IEP and placement. If, however, the student's current IEP cannot be implemented as written in that setting, the IEP team must develop an appropriate program for the student and revise the IEP to reflect the changes. In revising the IEP, if there is a significant reduction in the amount of services, this constitutes a change in placement. If the transfer to the alternative school or program is a change in placement the LEA must provide the parents prior written notice (PWN).

Is it a change in placement to place a student with a disability in an alternative school or program?

If the recommendation for enrollment in the alternative school is for disciplinary reasons and is for more than ten school days, then this may be a removal that amounts to a change in placement if the program offered at the alternative school is substantially different from that offered through the student's regular placement. If the alternative school offers the same program that the student would receive in his or her regular placement, then this may be a change in location rather than a change in placement. If the student will not receive the opportunity to enroll in the same type classes, extracurricular and nonacademic activities, and other activities as in his or her regular placement, then the removal is a change in placement.

If a removal to the alternative school is a change in placement, then the student has certain procedural and due process rights that must be adhered to by the LEA or you risk violating the IDEA, Section 504, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008. If a student's rights are violated under these federal laws, the LEA leaves itself vulnerable to charges of violating the student's civil rights.

If the removal to the alternative school is a change in placement for disciplinary reasons, within ten school days of the decision to change the placement, the LEA, must conduct a manifestation determination. If the behavior is related to the student's disability, the student may not be legally removed to an alternative school, unless the parent consents to the change in placement. The parent cannot be threatened or coerced into agreeing to the removal. If the parent does not consent to the removal, the student must be allowed to remain in his or her regular placement or the LEA is required to initiate a due process hearing to effect the removal.

If the behavior is determined to be unrelated to the student's disability, then the student may be removed to the alternative school, if a nondisabled student would be subjected to the same kind of punishment for the same type offense. If the student's parent objects to the finding that the behavior was unrelated to the disability, then the parent is entitled to an expedited due process hearing on the issue, which must be completed within twenty school days of the date the parent requests the hearing. During that time the impartial due process hearing officer may return the student to the placement from which the student was removed if the hearing officer determines that the removal was a violation of 34 C.F.R. § 300.530, or that the student's behavior was a manifestation of the student's disability, or order a change of placement to an appropriate alternative educational setting for not more than 45 school days. (See 34 C.F.R. § 300.532.

If the IEP can be implemented as written while the student attends the alternative school or program, this simply constitutes a change in location and not a change in placement. The IEP team must determine if the IEP revisions constitute a change in placement. It is clear that anytime there is a change of any significance in the IEP, a change of placement occurs. Section 504 requires that prior to any significant change in placement, an evaluation must be conducted. Although this evaluation is not required under the IDEA, the determination of whether an evaluation is needed should be made by the IEP team. In the event the IEP team determines that the alternative school or program is the appropriate LRE for a student ,but the IEP will be implemented as written, no informed parental consent is required.

Under what other circumstances would informed parental consent not be required when placing a student in an alternative school or program?

Informed parental consent is not required when weapons or drugs are involved, when there is a removal by an impartial due prcess hearing officer or the court in an instance where a student is substantially likely to cause harm to self or others, or in the event the student is expelled.

Are students with disabilities in an alternative school or program subject to the same discipline policies as students without disabilities?

This is a determination of the IEP team and must be discussed during the IEP meeting.

What are the certification requirements for personnel in an alternative school?

There is no flexibility to relax professional standards for personnel at the alternative school. State certification standards are still in effect. If a student was previously served in a self-contained class for students with learning disabilities or a self-contained class for students with emotional disabilities, then the certification standards for personnel delivering instruction at the alternative school are the same as the standards in the regular setting. Personnel must also meet the highly qualified requirements under the Elementary and Secondary Education Act (ESEA).

Must alternative schools and programs be accessible and barrier-free?

Yes. The ADA requires that all public buildings be accessible and barrier-free.

How do the requirements of Section 504 of the Rehabilitation Act of 1973 impact alternative schools?

The OCR has the responsibility under Section 504 and its implementing regulations to require that recipients of federal financial assistance, including funding through the U. S. Department of Education, not discriminate against persons on the basis of their disabilities. Therefore, LEAs that have alternative schools and programs may not exclude students with disabilities. To do so constitutes a violation of Section 504. Students with disabilities are entitled to the benefits of alternative schools and programs in the same manner as students without disabilities.

What training should be provided for teachers at alternative schools or programs?

These teachers should receive all of the training provided in other schools in the LEA, including how to make appropriate referrals to programs for students with disabilities under both the IDEA and Section 504. Training in the development and implementation of behavioral assessments and BIPs required by the IDEA should also be provided.

What are some of the potential pitfalls in providing services to students with disabilities in alternative schools?

It is critical to adhere to federal and state requirements for serving students with disabilities throughout the process to avoid substantive and procedural violations. The most common problems include the following pitfalls:

- failing to follow proper procedures to remove the student,
- failing to appropriately implement IEPs,

- failing to provide related services,
- failing to provide transition planning and services,
- failing to provide appropriately certified teachers,
- failing to provide individual educational planning,
- failing to provide sufficient materials and supplies to implement the IEPs,
- failing to provide a grading system that is consistent with the regular program,
- failing to transfer credits when the student transfers back to the regular program,
- failing to develop a plan to transition the student back into the regular placement, and
- failing to appropriately address the behaviors that caused the student to be transferred to the alternative school or program.